

# HOW NOT TO WRITE ANSWERS TO LAW SCHOOL EXAMINATIONS\*

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## I. INTRODUCTION

Every semester over the last forty years, as I have graded, I have vowed to share with students a few ideas on how not to write answers to law school examinations.<sup>1</sup> These ideas are not guaranteed to produce marked improvements in examination grades, but they may. Certainly, serious reflection on problems discussed here could result in an increase of a few points in a student's grade, and that might be the difference between passing and failing, between staying in school and dropping out. Beyond that, however, I am concerned with the communication skills of lawyers. If you are already satisfied with your grades, and do not care about being understood, read no further.

Before I get to the "not to's," let me say a few general things about a positive, organized approach to an examination. Organiza-

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An internationally respected scholar in the fields of African and Commonwealth law, he has written many law-related publications that fall within the area of taxation and other areas that coincide with the courses he presently teaches.

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1. I have taught during this span of time at six different law schools: Valparaiso, Yale (as a tutor in law), the University College, Dar es Salaam, Tanzania, the University of Nairobi, Kenya, Institut Teknologi MARA, Malaysia, and Ningbo University, Ningbo, China.

tion is more important than students generally realize. Many of my colleagues complain that students do not read — at least do not follow — examination instructions and do not organize their answers.

The examination process is a process of communication, and the burden is on the student. Study each question and organize your thoughts *before* you write. One should probably spend more time reading and thinking than writing. One good strategy is to read (or at least scan) all of the questions before answering any. It is most unlikely that a professor will ask two questions on the same conceptual area. It is desirable to predetermine the general area or areas of focus of each question. This is far better, for example, than reading the first question; determining (or guessing) that it deals with, among other things, say, consideration; writing a lengthy answer focusing on that subject; and then, much later, realizing that question five obviously deals with consideration and therefore the first question required an emphasis on some other concept. By that time it may be too late to rewrite the first answer.

In addition to organizing your answers, budget your time. You can say more in less time if you have properly allocated your time among the questions on the examination. This gives you more time to devote to organization.

There is another, more subtle, value in organization. If you develop your answer in a logical progression (“Begin at the beginning, go on till you come to the end; then stop,” *Alice-in-Wonderland* fashion), you can, in the process, educate yourself as to what the necessary elements and proper conclusions are. This is especially helpful in technical areas; for example, in problems involving complicated commercial transactions. You may find at the end that the answer is different from what you initially thought it would be.

## II. WRITING

Write like a lawyer — at least like a literate person. (This should not be a contradiction.) Analysis and articulation are important. Write clearly in ink, or type. Write in uncomplicated, complete sentences, and avoid obscure abbreviations. If you must use your own secret abbreviations, prepare a glossary or key in each answer. Teachers rarely mark students down (consciously) for bad handwriting, but there is little doubt that grades suffer when the flow of the

writer's thought is lost because the reader must decipher the answer one word or one abbreviation at a time and perhaps cannot decipher some of the words at all! If your handwriting is poor, at least write larger or print.

### III. GRAMMAR

Nor do teachers generally mark you down (consciously) for poor grammar in examinations. However, if the reader is distracted from the substance of your answer by grotesque grammar, you are bound to receive a lower grade than you otherwise would. A justice of a state supreme court, speaking at a law school, once said that when he hears ungrammatical speech in an oral argument, he cannot help being distracted from counsel's argument. I have heard another judge — a noted jurist on the federal appellate bench — make a similar comment. The same point applies in an examination. Further, how can one expect to persuade when he writes like an illiterate? Careless speech or writing is to some extent a sign of careless or otherwise inferior thought.

Here are a few of the more benign examples. If you do not know what is grammatically wrong with them, ask your legal writing teacher or consult a book on grammar.

“Four years ago a New Jersey case was decided which comes very close to the facts of the *Roe* case.”

“Surprisingly, one of the strongest statements of such a right appears to be the Catholic Church.”

“The tonsillectomy operation is relatively painless, simple and takes but a few minutes to perform.”

“They could not and still are not in many cases permitted to join.”

“Logical does not cease to be a good.”

“Every new case being like a new experiment.”

“This is particularly true in the case where the patient has expressed no wish of their own to have his life ended.”

### IV. SPASTIC WORD CHOICE

What I have said about poor handwriting and grammar applies equally to what one might call "spastic word choice." Here are two examples from one paper.

"Some courts say that if it is not stipulated specifically statutorily, then public policy will win. Others say that without stipulations we cannot limit the taxpayer from his right to deduct the amounts listed."

"Cts. have said that when public policy is strongly opposed to such operations and is viewed negatively, it should be frowned upon to offer the deductions."

Somewhat similar, but difficult to categorize, is the following: "The idea of precedents is that when an adjudged case or decision of a court in a prior case, is considered as furnishing an example of authority for an identical or similar case afterwards arising on a similar question of law." Such writing displays a mind running out of control. Other examples will follow.

#### V. *STRUCTURE OF THE ANSWER*

When answering the typical essay question, do not give only conclusions; give them, but also analyze the facts in light of the law. For example, do not just say, "Taxpayer can deduct the amount." Tell under what section and according to what cases or theories he can do so and why.

When short answers are asked for, do not give long answers. If instructions say, "Only answer 'true' or 'false,'" do just that, and do not add more. Otherwise, the reader will conclude that you are either unsure of yourself or just incompetent even to follow instructions.

Do not repeat in an answer what you have already written in that answer. Repetition wastes time, is distracting to your reader, and often suggests that you know very little. (Why else would you have to repeat?)

If, however, a point made in another answer is also relevant to the answer that you are presently writing, make it again. Do not expect your reader to recall or to go back to another of your answers. Each answer must be complete in itself. Teachers often go through all of the papers grading one question at a time rather than grading all questions in each exam. Therefore, the reader will not remember

what you have written in other answers.

Do not expect the reader to read into your answer anything that is not clearly there. Your citing a case, for example, does not convince the reader that you know how it applies to the question before you. Your citing a doctrine or legal term does not satisfy the reader that you know its complete relevance to the fact situation before you. Do not just cite a section of a statute unless it is clear from the context that this is sufficient. However, if the context so indicates, you can adequately answer the question without citing case names or specific statutory sections.

#### VI. TAKE A POSITION

When answering an essay question, take a position! Decide! Do not “waffle.” Vague, rambling, ambiguous answers are totally unimpressive. “It is this; but it could be that,” tells the reader that you do not really know the subject. If a complete answer requires a statement of alternative views, then state them, but *take a position!* If you must make assumptions to answer properly, state what your assumptions are. It is not at all wise, however, to make assumptions that change the question substantively.

Even if you make a “wrong” conclusion when you take a position in an answer, you still may receive reasonably good marks if you have discussed all (or most) of the issues in an organized, effective, “lawyer-like” way. It is quite possible to get a better grade on a well-written answer supporting a “wrong” conclusion than on a sloppy, rambling, uncertain answer supporting the “correct” conclusion. Many questions on law examinations are “close calls” anyway.

#### VII. USELESS THINGS

Far too large a percentage of the contents of answers is useless or worse. The teacher knows the names of the authors of the casebook, for example. He knows when you come to the end of your answer. Writing “time” does not convince him that you know a great deal more and would have written it but for the running of the clock. Do not restate the question or problem. This wastes valuable time. If it is necessary to restate some of the facts, work them into your reasoning.

Do not write answers to questions not asked or discuss unrelated cases or topics discussed in class just to show the reader what

you know. Had he wanted to know about that, he would have asked.

Do not tell the professor, "Gee, this was a great course." He or she already knows it was and may suspect you of trying to curry favor. Spend your precious time and energy responding directly to the questions on the exam.

Do not follow a written number with a numeral (e.g., "ten (10)"). That may be appropriate in a contract, but leave it out of your examinations (and your love letters). One can be too "lawyer-like."

### VIII. SLANG

Avoid slang or made-up words or expressions. Here are some good examples of bad writing:

"The court did not buy the argument . . . ."

"Courts are hung up on . . . ."

"The year consciousness of the Commissioner"

"Contrastly"

"An onus crime"

"The court may get hardnozed."

"The code has placed a double whammy on embezzlers."

"Back door loopholes"

"Gambling is a no-no."

"Where they are coming from"

### IX. HOW'S THAT AGAIN?

I have used the above caption for want of a better expression to describe the following prose examples that are not the marks of a professional:

"To derive at the best possible solution"

"Cardozo gleemed the insight."

"This `wam, bam, thank you mam' approach to legislation gives one nothing to look to."

"Indelibly found forever"

"Without tax all of the wealth will end up in someone's cookie jar."

"[Taxpayer] will be drydocked." (Possibly meaning that he will not

be able to prevail in his claim.)<sup>2</sup>

“Treatment of a capital gain as a capital gain is determined by looking at several factors to determine whether the gain will be treated as a capital gain.”

“Disallowed to deduct”

“The more income you make the more percentages of income you are taxed on.”

“To result in a less tax.”

“The question was being”

“Far and few between”

“Yet since when are courts in their ivory bunkers the almighty alknowing authority on what the needs of society are?”

“Judo-Christian philosophy”

“Strict adherence to law can leave a bad taste in the opinion reader's mouth.”

I can assure you that all of the above left “a bad taste” in the examination reader's mouth.

### X. THIS FOR THAT

In many cases the reader can determine from the context what the writer means even though he uses the wrong word or has misspelled the word in question. However, careful writers, whose minds are in control, do not use the wrong word or misspell the right one. Consider the following cases of using one word or phrase, even a nonexistent one, while meaning another:

“percept”	for	“precept”
“extemporaneous”	for	“extraneous”
“loose”	for	“lose”
“elude”	for	“allude”
“tenant”	for	“tenet” (e.g., “one of the tenants of his philosophy”) <sup>3</sup>

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2. Remarks in parentheses following quoted material are “mine” (including this one).

3. For me this always conjures up an image of some structure, a “philosophy,” and inside it a little tenant sitting in an easy chair under a lamp reading a newspaper. By then I have lost the track and must go back to find out what the student was trying

“by”	for	“buy”
“like”	for	“as” (“like I said”)
“distinguishment”	for	“distinction”
“strife”	for	“strive”
“frounds”	for	“frowns”
“revocate” or “revock”	for	“revoke”
“relief”	for	“relieve”
“implyed”	for	“employed”
“enfringe”	for	“infringe”
“asset”	for	“asset”
“suffice”	for	“sufficient” (e.g., “it would be suffice”)
“insulate”	for	“reduce” (e.g., “taxpayer will thereby insulate his tax liability”)
“off of”	for	“from” (e.g., “income off of a trust”)
“more depthful”	for	“deeper”
“resight”	for	“recite”
“plaintive”	for	“plaintiff”
“levity”	for	“leeway”
“analyzation”	for	“analysis”
“are”	for	“our”
“you're”	for	“your”
“life”	for	“live”
“arose”	for	“arisen” (e.g., “A multitude of litigation has arose.”)
“effect”	for	“affect”
“to”	for	“by” (e.g., “deductible to X”)
“their”	for	“there” (and vice versa)
“phenomena” (plural)	for	“phenomenon” (singular) (and vice versa)
“criteria” (plural)	for	“criterion” (singular) (and vice versa)
“data” (plural)	for	“datum” (singular)



“to”	for	“too” (and vice versa, and either one for “two”!)
“of”	for	“have” (“might have been,” not “might of been”)
“and”	for	“to” (“try to do something,” not “try and do something” — except for cases where one tries and also does the act in question)
“use”	for	“used” (“used to,” not “use to”)
“suppose”	for	“supposed” (“supposed to,” not “suppose to”)

### *XI. THE MANGLED METAPHOR*

There is no sanction under the criminal law, as far as I know, for committing mayhem on or murdering a metaphor. There should be. Metaphors and similes are useful devices for communicating meaning. They are word pictures. Sometimes one finds that metaphors are maimed nearly beyond recognition. The result is that in self-defense they retaliate against the malefactor by diminishing his effectiveness and reducing his score. Now for some examples. I have purposely omitted the use of “[sic]” here, as elsewhere, so as not to interfere with their natural elegance and flow.

“If one assumes that he can think in another's shoes . . . .” (That student surely was thinking in his shoes.)

“Weed out the fat”

“Ferrit out the wheat from the chaff”

“Dead horses can come back to haunt you.” (Perhaps in nightmares?)

“Congress uses the club of tax (power to tax — power to destroy) as a carrot to guide society in a particular direction.”

“But like deductions [capital gains and losses] are a matter of grace and is weilded like a lollipop.”

“The judiciary has the obligation of taking the crude fiber of general law and moulding it into the clay from which specific cases are decided.”

“The tax laws hopping on the women's lib bandwagon”

“In attempting to give the businessman a shot in the arm and help

him get his feet off the ground . . . .” (Where was that shot?)

Some of these are, of course, amusing; but they are therefore at least distracting. Harm a metaphor at your peril! It may come back to haunt you.

## XII. CONCLUSION

You are training to become members of a learned profession; even beyond law school you will be judged by the quality of your communication skills. Now is the time to develop those skills. The opportunity is here and now. The burden is on you.

## POSTSCRIPT

In 1954, Professor William Prosser wrote an article titled *English As She Is Wrote*.<sup>4</sup> You should read that too. One of his colleagues suggested that the students made intentional “mistakes” just to “fuss” Prosser.<sup>5</sup> If they did, they probably paid a price for it. Perhaps students at Minnesota had a stronger academic deathwish than most.

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4. 7 J. LEGAL EDUC. 155 (1954).

5. See Stanley V. Kinyon, *English As She Was Wrotten At Minnesota — A Legal Fairy Tale*, 7 J. LEGAL EDUC. 553 (1954).